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Message Text

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PAGE 01 KUALA 02028 01 OF 02 020636Z
ACTION EA-09

INFO OCT-01 ISO-00 AID-05 CIAE-00 COME-00 EB-08 FRB-03
INR-07 NSAE-00 USIA-06 TRSE-00 XMB-02 OPIC-03
SP-02 LAB-04 SIL-01 OMB-01 /052 W
----------020642Z 026510 /11
R 010821Z APR 77
FM AMEMBASSY KUALA LUMPUR
TO SECSTATE WASHDC 6711
INFO AMEMBASSY SINGAPORE

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E.O. 11652: N/A
TAGS: EINV, MY
SUBJECT: INDUSTRIAL COORDINATION ACT AMENDMENTS PASSED

1. SUMMARY: IN SPARSELY ATTENDED SESSION OF PARLIAMENT ON MARCH 31, AMENDMENTS TO CONTROVERSIAL INDUSTRIAL COORDINATION ACT (ICA) WERE PASSED. MOST SIGNIFICANT CHANGE IS REPLACEMENT OF MINISTER OF TRADE AND INDUSTRY AS LICENSING AUTHORITY WITH "LICENSING OFFICER" TO BE APPOINTED BY PRIME MINISTER. APPEAL OF LICENSING OFFICER DECISION WILL NOW GO TO MINISTER OF TRADE AND INDUSTRY, WHOSE DECISION WILL BE FINAL. IN PRESS CONFERENCE HELD PRIOR TO PARLIAMENTARY SESSION, MINISTER OF TRADE AND INDUSTRY GAVE FULL BRIEFING ON CONDITIONS TO BE IMPOSED UNDER ICA, INCLUDING THOSE REGARDING EQUITY. MINISTER ALSO CLEARED UP CONFUSION CREATED TWO DAYS EARLIER WHEN DEPUTY PRIME MINISTER ANNOUNCED THAT APRIL 30 DEADLINE FOR SUBMISSION OF APPLICATIONS FOR LICENSES WOULD BE EXTENDED. DEADLINE WILL NOT BE EXTENDED FOR LEGAL REASONS BUT MANUFACTURERS NOW ONLY REQUIRED TO SUBMIT LETTER OF INTENT THAT THEY WILL APPLY FOR LICENSE. UPON RECEIPT OF LETTER, MINISTRY WILL SEND FIRM SIMPLIFIED APPLICATION FORM TO BE SUBMITTED WITHIN "REASONABLE TIME". CHINESE
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PAGE 02 KUALA 02028 01 OF 02 020636Z

BUSINESSMEN NATURALLY DISAPPOINTED WITH OUTCOME OF NEGOTIATIONS AND ARE CONSIDERING THEIR NEXT MOVES. WHILE THEY APPRECIATE DIFFICULTY OF MALAYSIAN CHINESE ASSOCIATION IN OPPOSING ICA, THEY ARE ALSO DISAPPOINTED (REALISTICALLY OR NOT) THAT MCA LIMITED ITS COMMENT IN PARLIAMENT TO MILD STATEMENT BY BACKBENCHER. PRIVATE SECTOR NOW RECONSIDERING ITS OPTIONS AFTER HAVING ITS MOST IMPORTANT

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

RECOMMENDATIONS REJECTED BY GOM. END SUMMARY.

2. IN TWO HOUR DEBATE MARKED BY BOYCOTT BY
MALAYSIAN CHINESE ASSOCIATION (MCA) EXCEPT FOR ONE BACKBENCHER,
INDUSTRIAL COORDINATION ACT (ICA) AMENDMENTS WERE PASSED
BY PARLIAMENT ON MARCH 31. ONLY OPPOSITION CAME FROM
LEE LAM THYE, DEMOCRATIC ACTION PARTY (DAP-SOCIALIST
OPPOSITION PARTY) MEMBER FROM KUALA LUMPUR.

3. MOST IMPORTANT CHANGE IS REPLACEMENT OF MINISTER OF
TRADE AND INDUSTRY AS LICENSING AUTHORITY BY A FORMAL
"LICENSING OFFICER" TO BE APPOINTED BY PRIME MINISTER.
MINISTER OF TRADE AND INDUSTRY WILL NOW ACT AS SOLE
ARBITER OF APPEALS UNDER ICA. ACCORDING TO AMENDMENT,
MINISTER'S DECISION "SHALL BE FINAL AND SHALL NOT BE
QUESTIONED IN ANY COURT". AGGREIVED FIRMS WILL HAVE
30 DAYS TO FILE AN APPEAL. DETAILS ON ACTUAL APPEAL
PROCEDURE ARE TO BE WORKED OUT IN CONSULTATION WITH
PRIVATE SECTOR. THE LICENSING OFFICER IS AUTHORIZED TO
ATTACH SUCH CONDITIONS TO LICENSE AS HE THINKS FIT
"AFTER CONSULTATION WITH THE MANUFACTURER IN RESPECT OF
WHOM THE CONDITIONS ARE TO BE VARIED".

4. DATUK HAMZAH BIN ABU SAMAH, MINISTER OF TRADE AND
INDUSTRY, HELD PRESS CONFERENCE PRIOR TO PARLIAMENTARY
SESSION TO PROVIDE FURTHER DETAILS ON MANNER IN WHICH ICA
WILL BE ADMINISTERED. MINISTER PROVIDED FULL DETAILS ON
CONDITIONS THAT ALL FIRMS WILL HAVE TO MEET AND ON
ADDITIONAL CONDITIONS THAT WILL ONLY BE APPLIED TO CERTAIN
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FIRMS. FIRMS WITH LESS THAN M$250,000 IN SHAREHOLDERS' FUND
(MARKETBASKET MEASUREMENT INCLUDING PAID-UP CAPITAL,
ETC.) WILL NOT HAVE TO APPLY FOR LICENSE. FIRMS WITH
MORE THAN M$250,000 IN SHAREHOLDERS' FUND BUT LESS THAN
M$500,000 IN FIXED INVESTMENT (TOTAL VALUE OF LAND,
BUILDINGS, MACHINERY AND EQUIPMENT) WILL BE EXEMPTED FROM
EQUITY REQUIREMENTS BUT WILL HAVE TO COMPLY WITH OTHER
CONDITIONS. WITH REGARD TO EQUITY, FIRMS ENGAGED IN NEW
OR EXPANSION PROJECTS WILL GENERALLY BE REQUIRED TO SELL
SOME OF THEIR SHARES TO MALAYSIANS AND TO SET ASIDE AN
AGREED UPON PERCENTAGE OF THEIR SHARES FOR LATER PURCHASE
BY BUMIPUTRAS (ETHNIC MALAYS). EXISTING FIRMS WHICH
HAVE RECEIVED PRIOR GOM APPROVAL WILL BE ALLOWED TO
RETAIN THEIR PRESENT EQUITY STRUCTURE UNLESS IT "IS
NOT IN LINE WITH THE TARGETS OF THE NEW ECONOMIC POLICY"
(NEP) IN WHICH CASE, "THE COMPANY MUST ATTEMPT TO RESTRUCTURE
ITS SHARE CAPITAL TO CONFORM WITH THE POLICY. EXISTING
FIRMS THAT HAVE NOT RECEIVED PRIOR GOM APPROVAL MUST
CONFORM WITH THE TARGETS OF THE NEP.

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

5. THE MINISTER ALSO OUTLINED OTHER CONDITIONS RELATING TO THE NEP WITH RESPECT TO: EMPLOYMENT OF MALAYSIANS (TO REFLECT RACIAL COMPOSITION OF COUNTRY); USE OF MALAYSIAN COMPANIES WITH AT LEAST 30 PERCENT BUMIPUTRA OWNERSHIP FOR DISTRIBUTION AND PROFESSIONAL SERVICES; AND APPOINTING MALAYSIANS TO BOARDS OF DIRECTORS. NON-NEP CONDITIONS WERE WITH RESPECT TO GOM APPROVAL OF PLANS FOR GOING PUBLIC; USE OF MODERN MACHINERY; GOM APPROVAL OF MANUFACTURING AGREEMENTS; USE OF LOCAL RAW MATERIALS; AND INSTALLATION OF POLLUTION CONTROL DEVICES.

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PAGE 01 KUALA 02028 02 OF 02 020635Z
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LIMITED OFFICIAL USE SECTION 2 OF 2 KUALA LUMPUR 2028

6. MINISTER TOOK ADVANTAGE OF PRESS CONFERENCE TO CLEAR UP CONFUSION CREATED BY STATEMENT BY DEPUTY PRIME MINISTER (DPM) TWO DAYS EARLIER TO EFFECT THAT DEADLINE FOR ICA WOULD BE EXTENDED. HAMZAH STATED THAT HE HAD EXPLAINED TO DPM THAT EXTENSION OF DEADLINE WOULD REQUIRE ADDITIONAL AMENDMENT TO ICA AND THAT ALL THAT WAS REQUIRED OF MANUFACTURERS AT PRESENT TIME WAS SUBMISSION BY APRIL 30 DEADLINE OF LETTER OF INTENT TO APPLY FOR LICENSE. ACCORDING TO HAMZAH, DPM AGREED AND DEADLINE WILL STAND. HAMZAH ALSO EXPLAINED THAT UPON RECEIPT OF LETTER OF INTENT, MINISTRY WILL SEND COMPANY NEW SIMPLIFIED FOUR-PAGE (FORMERLY THIRTY) APPLICATION FORM. ALTHOUGH THERE IS NO DEADLINE FOR SUBMISSION OF COMPLETED APPLICATION, MINISTRY EXPECTS THAT THEY WILL BE SUBMITTED WITHIN "A REASONABLE TIME".

7. COMMENT: WITH THE LONG DELAYED PASSAGE OF THE AMENDMENTS

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009

TO THE ICA AND WITH APPROACH OF APRIL 30 DEADLINE, BALL IS
CLEARLY THE CHINESE BUSINESSMENS' COURT. MANUFACTURERS
ARE NATURALLY DISAPPOINTED WITH OUTCOME OF NEGOTIATIONS AND
FEDERATION OF MALAYSIAN MANUFACTURERS IS REPORTEDLY
CONSIDERING GOING TO PUBLIC FOR FIRST TIME IN EXPRESSING
OPPOSITION TO MOST OBJECTIONABLE SECTIONS OF ICA.
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PAGE 02 KUALA 02028 02 OF 02 020635Z

CREDIBILITY OF MCA AMONG CHINESE BUSINESSMEN EXPECTED TO
PLUMMET AFTER LIMP-WRISTED PERFORMANCE PARTY DISPLAYED
IN OPPOSING ICA. SOURCES IN THE BUSINESS COMMUNITY HAVE
INFORMED US THAT, WHILE THEY APPRECIATE BEHIND-THE-SCENES
WORK MCA DID ON THEIR BEHALF, THEY RESENT FACT THAT ONLY
ONE MCA BACKBENCHER ROSE TO QUESTION, IN MILDEST TERMS
POSSIBLE, POWERS CONFERRED ON GOM BY ICA. PRIVATE
SECTOR NOW FACED WITH SITUATION IN WHICH ITS MOST
CHERISHED RECOMMENDATIONS (INDEPENDENT LICENSING AUTHORITY
AND APPEALS BOARD) HAVE BEEN REJECTED BY GOM. A PERIOD OF
WOULD-LICKING IS CLEARLY IN ORDER AS PRIVATE SECTOR
CONSIDERS ITS OPTIONS, INCLUDING WHETHER OR NOT TO
INVEST UNDER THESE CONDITIONS.
UNDERHILL

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EO Systematic Review
22 May 2009
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